

Nebraska Nonresident Contractor Program

Revised September, 2005

For more information, check our
Web site: www.revenue.ne.gov



The purpose of this information guide is to provide an overview of the Nebraska nonresident contractor registration procedures and to provide information on various tax programs and the bond requirements for construction contracts in Nebraska.

Overview

All nonresident contractors engaging in the business of contracting in Nebraska, MUST do the following, even if they hold a certificate of authority from the Secretary of State to transact business in Nebraska:

- ✓ Register their business with the Nebraska Department of Revenue, (Form 24);
- ✓ Register each contract valued at \$2,500 or more with the department, (Form 24A); and
- ✓ File a bond or alternative security for contracts valued at \$2,500 or more (Form 24B).

Please note: Where the term “contractor” is used it will mean any prime, general, or subcontractor meeting the definition of contractor or nonresident contractor.

In addition, there are other tax reporting and filing requirements that affect nonresident contractors. Please see “Part II: Taxes Related to Doing Business in Nebraska.”

Definitions

Contractor. Contractor shall include individuals, firms, partnerships, limited liability companies, corporations, or other associations of persons engaged in the business of construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor shall also include any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person.

Nonresident Contractor. A nonresident contractor is any contractor (prime, general, or subcontractor) who:

- is not domiciled in Nebraska; or
- has not maintained a permanent place of business or residence in Nebraska for a period of at least six months.

Establishing Residency

Maintaining a permanent place of business includes, but is not limited to:

- ✓ maintaining a business office with a verifiable business name and address;
- ✓ payment of separate utilities, including a telephone;
- ✓ a telephone directory listing;
- ✓ registration of vehicles;
- ✓ registration with the Secretary of State; and
- ✓ a listing with the Better Business Bureau.

Using a motel address and telephone, or a mobile home at the construction site is not considered to be maintaining a permanent place of business in this state.

If a contractor has established residency but discontinues maintaining a permanent place of business in Nebraska after the contract has been

awarded, the contractor’s resident status is lost. The contractor immediately becomes subject to the nonresident registration and bonding requirements as a nonresident contractor.

PART I: REGISTRATION AND BONDING REQUIREMENTS

Business Registration

All nonresident contractors engaging in the business of contracting in this state must submit a Nebraska Registration Application for Nonresident Contractor, Form 24, along with the one-time business registration fee of \$25, to:

- register the business as a nonresident contractor;
- apply for licenses and permits in other tax programs, if required; and
- choose a contractor option.

The contractor option determines how sales and use tax will be paid by the contractor on building materials and fixtures, and how sales tax will be collected by the contractor on certain construction projects.

The Nebraska Department of Revenue must be notified of any subsequent change of address or change in the type of ownership of the business. Notification may be made on a Nebraska Change Request, Form 22.

Contract Registration

All nonresident contractors and subcontractors must register EACH of their contracts (projects) that are \$2,500 or greater. Contracts are registered by filing a Nebraska Contract Permit Application for Nonresident Contractor, Form 24A. The registration fee is \$25.

Each contract awarded must also be secured with a bond or other alternative security.

Please note: Contracts for less than \$2,500 are not required to be registered or bonded. However, every nonresident contractor and subcontractor is still required to register his or her business with the Nebraska Department of Revenue, and to comply with all local permit and code requirements.

Penalty for Failure to Register

Nonresident contractors and subcontractors, who fail to register their business with the department or who fail to register a contract, can be denied the right to perform such contract until registration is made. An injunction can be sought to stop any activity in the performance of any contract until registration is made and the required bond is executed and filed. A temporary injunction enjoining the execution of any contract can be granted without notice and the contractor will not be entitled to maintain an action in the courts of this state to recover payment for performance on such contracts. Each day of activity or operation in violation of these requirements constitutes a separate offense.

Security Requirement

Nonresident General (Prime) Contractor. Every nonresident prime contractor must file a bond or alternative security with the department for each contract to be performed in this state. The Nebraska Tax Bond, Form 24B, or alternative security must be submitted with the Form 24A.

Nonresident Subcontractors. Nonresident subcontractors who are awarded a contract for some or all of a construction project to be performed in Nebraska must file a bond or alternative security with the department. The required amount of each subcontractor’s bond or alternative security is based on a percentage of the contract amount awarded to them. Nonresident subcontractors must register their business (Form 24), their portion of the contract (Form 24A), and submit the required bond (Form 24B) at the same time as or prior to the nonresident prime contractor’s submission of Forms 24, 24A, and 24B.

Security Amount. The amount of the bond or alternative security that must be submitted is based on a percentage of the total contract price of each contract. The total contract price can only be reduced by:

- Contracts awarded to Nebraska resident subcontractors;
- Contracts awarded to nonresident subcontractors who are properly registered and bonded with the Nebraska Department of Revenue for the amount of the total contract price that has been awarded to them; and
- Contracts for less than \$2,500.

Nonresident prime contractors cannot reduce their total contract price that must be bonded by any amounts awarded to nonresident subcontractors who are not properly registered and bonded at the time the prime contractor submits its Form 24A. Nonresident prime contractors may amend their bond amount as contracts are awarded to resident subcontractors, or to properly registered and bonded nonresident subcontractors.

The required bond or alternative security amount is ten percent of the contract price up to the first \$100,000, plus five percent of the contract price in excess of \$100,000, rounded to the nearest multiple of \$1,000. Contracts of \$2,500 to \$10,000 require security in the amount of \$1,000. Security is not required for contracts of less than \$2,500.

Bond Computation Example:

Total Contract Price	\$200,000
Amount awarded to resident subcontractor	\$20,000
Amount awarded to properly registered and bonded nonresident subcontractors	15,000
Total of contracts less than \$2,500 (5 contracts)	<u>10,700</u>
	\$ 45,700
Amount subject to bonding	\$154,300
Computation of bond amount:	
10% of \$100,000	\$10,000
5% of \$54,300	<u>2,715</u>
	\$12,715 (Round up to nearest \$1,000)

Amount of Contract Bond \$13,000

Multiple-Project Bond. A multiple-project bond or alternative security may be issued for all contracts to be performed within a particular period of time. For a multiple-project bond, add the total contract price of all construction contracts simultaneously being performed in this state during a specific period of time.

If the department determines at any time that the required security will not cover the tax liabilities involved, it may require the security to be increased.

Alternative Securities. Alternative securities include, but are not limited to, the following:

- ✓ Certificates of deposit or certified checks covering at least the length of time of the construction project and a sufficient period of time in which to file the required tax returns, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, in amounts not exceeding the federally insured amount and in the total amount specified by the department.
- ✓ Investment certificates or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation, in amounts not exceeding the federally insured amount and in the total amount specified by the department.

The ownership of securities other than a surety bond must indicate “Nebraska Department of Revenue **or**” and the contractor’s name. Securities indicating the “Nebraska Department of Revenue **and**” with the contractor’s name as owners will not be accepted.

Alternative security may be retained by this department for up to three years after completion of the project. This insures security in the event of liability determined to be due as a result of an audit.

Exceptions

- Nonresident contractors awarded construction contracts by the Nebraska Department of Roads or the University of Nebraska are not required to submit the Nebraska Tax Bond, Form 24B. In such cases, a performance bond amounting to 100 percent of the contract price, including all taxes and contributions due under the employment security law, is required to be furnished directly to these organizations. A copy of the performance bond must be submitted to the Nebraska Department of Revenue with the Form 24A. The nonresident contractor must still comply with the contractor registration requirements.
- Contracts with a total value of less than \$2,500 need not be registered or bonded. However, every nonresident contractor and subcontractor is still required to register his or her business with the Nebraska Department of Revenue, and to comply with all local permit and code requirements.

Bond Clearance. After completion of a contract, the nonresident contractor must file a Nebraska Bond Clearance Request, Form 24C. A Form 24C is not to be submitted when alternative security has been provided in-lieu-of filing a bond (Form 24B). Request for clearance of the alternative security is made by a letter or other document as determined by the specific type of alternative security that was provided.

The department will NOT release the bond or alternative security of the nonresident prime contractor until:

- ✓ All nonresident subcontractors have properly registered their business in this state;
- ✓ All nonresident subcontractors have registered and provided a bond or alternative security for their portion of the contract; and
- ✓ All required tax returns have been filed by the contractor and all its nonresident subcontractors working on the project.

Final payment to nonresident subcontractors must be withheld by a resident or nonresident prime contractor to guarantee that all taxes,

contributions, penalties, and interest due from the subcontractors have been paid.

Please note: Failure to comply with these requirements will cause the prime contractor to be directly liable for all taxes, contributions, penalties, and interest due from nonresident subcontractors working on the project.

Each nonresident contractor must attach documentation from the county assessor of each county where work was performed showing that all local taxes assessed during the project period have been paid, or that no local taxes have been assessed. Failure to provide such documentation will result in the Clearance request being returned to the applicant.

In the case of a multiple-project bond, a separate Form 24C must be submitted for each contract as it is completed. The contract must be specifically identified on the form.

Upon payment of all taxes and contributions due this state for the effective dates of the contract, the request for bond clearance will be approved.

Upon approval of the Form 24C by the department, the nonresident contractor is relieved from the bonding requirements of Nebraska Revised Statute Sections 77-3101 to 77-3113, for the completed contract, and the surety is authorized to cancel the bond. Approval of such clearance by the department does not relieve the surety or the nonresident contractor from a future assessment of any tax, penalty, or interest for the effective dates of the bond determined to be due as a result of an audit.

The surety company issuing bonds as required by sections 77-3101 to 77-3113, may cancel the bond(s), as provided in the conditions of Form 24B. The cancellation will only relieve the surety of liability for taxes or contributions which may accrue subsequent to the effective date of cancellation. The cancellation does not relieve the surety of liability for taxes or contributions which accrue during the effective dates of the bond. If cancellation occurs before completion of the project for which the bond was obtained, the nonresident contractor must provide new security for the remainder of the project.

PART II: TAXES RELATED TO DOING BUSINESS IN NEBRASKA

Employee Withholding

A nonresident contractor or subcontractor who has an office in or engages in business in Nebraska is required to deduct and withhold income tax on all wages paid for services performed within Nebraska. For certain nonresident employees, the tax deducted and withheld may be determined pursuant to miles, time, or money earned in the state (see Withholding Regulations 21-004 and 21-006). Quarterly filing is required, along with a yearly reconciliation. Applicable forms include Forms 941N and W-3N.

Withholding for Personal Services Paid to Other Nonresidents

- ✓ A nonresident contractor must withhold on such payments if the contractor is: (1) making a payment or payments in excess of \$5,000; or (2) maintaining an office or transacting business within Nebraska and making payments in excess of \$600. Withholding of personal service income is reported on

Nebraska Withholding Certificate for Nonresident Individuals, Form W-4NA.

- ✓ Personal services do not include services performed where the capital furnished by the nonresident is a material income-producing factor. Capital will be considered a material income-producing factor whenever the value of the use of capital, or the value of the capital furnished, is in excess of 50 percent of the amount of the payment. An example of such services includes construction of improvements to real estate when the nonresident contractor furnishes the materials incorporated into the improvement.

Nonresident Contractor Sole Proprietorship Income Tax Filing Requirements

A nonresident contractor who is a sole proprietorship or independent contractor must file a Nebraska Individual Income Tax Return, Form 1040N, to report income derived from the contractor's Nebraska contracts. Income derived from within this state also includes income distributions that the nonresident contractor receives from any S corporation, limited liability company, or partnership that is doing business in this state.

The form used to report individual income tax is Form 1040N, along with the Schedule III calculation for partial-year residents and nonresidents reporting Nebraska source income.

Nonresident Contractor Corporation Income Tax Filing Requirements

If the nonresident contractor is a corporation doing business in this state, a Nebraska Corporation Income Tax Return, Form 1120N, must be filed to report the income of the corporation. The tax base is federal taxable income. If the business is multistate, the income is apportioned to Nebraska using a "sales only" factor. A single combined return is required if the business is part of a unitary group.

Businesses that are organized as partnerships, limited liability companies, or S corporations must file the appropriate Nebraska return to report the Nebraska share of federal taxable income distributed to partners, members, or shareholders.

Sales and Use Tax Requirements

All nonresident contractors are considered retailers for sales and use tax purposes and must obtain a Nebraska Sales Tax Permit. All nonresident contractors should elect a contractor option. The option selected determines how sales and use tax will be paid by the contractor on building materials and fixtures, and how sales tax will be collected by the contractor.

- **Option 1.** The contractor maintains a tax-free inventory of building materials and fixtures. On a taxable contractor labor project, the contractor must collect sales tax on the total amount charged for building materials, fixtures, and contractor labor. On an exempt contractor labor project (see below), Option 1 contractors will only collect sales tax on charges for building materials and fixtures, provided, these charges are separately stated.
- **Option 2.** The contractor maintains a tax-paid inventory of building materials and fixtures. The contractor must collect sales tax on the contractor labor using the required contractor labor percentage, unless a specific exemption applies.

- **Option 3.** The contractor maintains a tax-free inventory of building materials and fixtures and remits consumer's use tax when the items are withdrawn from inventory. The contractor must collect sales tax on the contractor labor using the required contractor labor percentage, unless a specific exemption applies.

Contractor Labor

Contractors are required to collect sales tax on their charges for construction services, unless the project is an exempt contractor labor project listed below. The amount on which the sales tax is calculated is determined by the contractor option chosen.

Exempt Contractor Labor Projects

- 1 First or original construction of a building or other structure;
- 2 The addition of an entire room or floor (story) to any existing building. The addition must actually increase the square footage of the building **and** increase the number of rooms or floors in the existing building. The exemption is limited to charges associated with:
 - ✓ the construction of the new room or floor;
 - ✓ that part of the existing wall, floor, or ceiling that is altered to accommodate the point of access between the new room or floor and the existing building; and
 - ✓ any electrical, plumbing, heating, or cooling system modifications needed to support the new room or floor.
- 3 The completion of an unfinished portion of an existing building or structure;
- 4 The restoration, reconstruction, or replacement of a building or structure damaged or destroyed by fire, flood, tornado, lightning, explosion, ice storm, or natural disaster;
- 5 The construction, repair, or annexation of any structure used for the generation, transmission, or distribution of electricity; or
- 6 The major renovation of an existing building or unit of an existing building when at least 75 percent of the square footage of the building or unit is renovated.

To be exempt from the tax on contractor labor, major renovation projects on single family dwellings and duplexes require the filing of:

- ✓ Notification: Exempt Contractor Labor - 75% Renovation Project of a Single-Family Dwelling or Duplex. There is no charge for the Notification.

Projects on any other type of building (e.g., apartment, commercial, industrial) requires approval from the department that the project meets the criteria for a major renovation. An Application for Approval of a Major Renovation form must be filed with the department along with the nonrefundable \$500 application fee.

The notification and application forms can be obtained from the department's Web site.

The department will send acknowledgment of receipt of the notification, or an approval of the application, whichever is applicable. The information provided in the notification or application is subject to review and audit by the department.

Taxable Labor Projects

Projects that do not meet the criteria of 1-6 above are taxable contractor labor projects.

Contracts with Exempt Entities

A contractor engaging in a construction project with a governmental unit or exempt organization must receive a properly completed and signed Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, **before** any building materials are annexed.

Please refer to the following resources for more detailed information regarding the contractor options, taxation of contractor labor charges, exempt contractor labor projects, contracts with exempt entities, major renovation projects, and billing information. These resources are available on the department's Web site.

- Regulations:
 - 1-017 Contractors;
 - 1-090 Nonprofit Organizations;
 - 1-091 Religious Organizations;
 - 1-092 Educational Institutions;
 - 1-093 Governmental Units.
- Information Guides:
 - Nebraska Taxation of Contractors General Information;
 - Nebraska Taxation of Contractors Option 1;
 - Nebraska Taxation of Contractors Option 2;
 - Nebraska Taxation of Contractors Option 3;
 - Nebraska Taxation of Nonprofit Organizations; and
 - Governmental Entities.

Unemployment Insurance Requirements

Additional registration and returns are required by the Nebraska Workforce Development Department of Labor. Specific information is available from their Web site www.NebraskaWorkforce.com or by writing them at Nebraska Workforce Development Department of Labor, P.O. Box 94600, Lincoln NE 68509-4600.

Liability for Taxes

Any contractor who contracts with any subcontractor who is or may become subject to Nebraska nonresident contractor requirements must withhold from payments made under the contracts. The amount of withholding must be sufficient to guarantee that all taxes, including contributions due under the Employment Security Law and all taxes which may accrue to this state or to any political subdivisions on account of the execution and performance of such contracts, will be paid when due. Failure to comply with these requirements will cause the prime contractor to be directly liable for such taxes, contributions, penalties, and interest due from the nonresident subcontractors.

Record-keeping Requirements

All nonresident contractors engaging in the business of contracting within this state must keep adequate records for a period of not less than three years as proof of all payments of wages, salaries, or other compensation, and payment of all taxes due. Records may include, but are not limited to: general ledgers, purchase journals, original purchase invoices, cash disbursements journals, bank statements, canceled checks, wage stubs, and tax returns.

FOR NEBRASKA TAX ASSISTANCE

For All Tax Programs Except Motor Fuels

Contact your regional office or call **1-800-742-7474** (toll free in NE and IA)
or **1-402-471-5729**

Nebraska Department of Revenue Web site address: www.revenue.ne.gov

A copy of the Taxpayer Bill of Rights is available by calling any of our regional offices or visiting our Web site.

SCOTTSBLUFF

Panhandle State Office Complex
4500 Avenue I, Box 1500
Scottsbluff, Nebraska 69363-1500
Telephone (308) 632-1200

NORTH PLATTE

Craft State Office Building
200 South Silber Street
North Platte, Nebraska 69101-4200
Telephone (308) 535-8250

GRAND ISLAND

TierOne Bank Building, Suite 460
1811 West Second Street
Grand Island, Nebraska 68803-5469
Telephone (308) 385-6067

NORFOLK

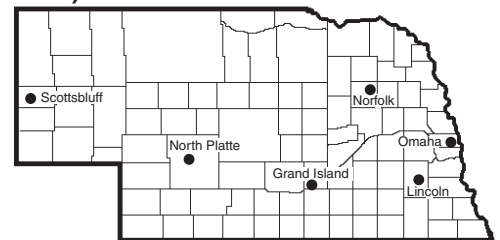
304 North 5th Street, Suite "D"
Norfolk, Nebraska 68701-4091
Telephone (402) 370-3333

OMAHA

Nebraska State Office Building
1313 Farnam-on-the-Mall
Omaha, Nebraska 68102-1871
Telephone (402) 595-2065

LINCOLN

Nebraska State Office Building
301 Centennial Mall South
Lincoln, Nebraska 68509-4818
Telephone (402) 471-5729



For Motor Fuels tax programs only call toll free 1-800-554-3835 (Lincoln residents call 471-5730).

Hearing-impaired individuals may call the Text Telephone (TT) at 1-800-382-9309. TDD (Telecommunications Device for the Deaf) is designated by the use of "TT," which is consistent with the Americans with Disabilities Act.